BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**322 of 2019**
Date of filing complaint:	**18.02.2019**
First date of hearing:	**21.05.2019**
Date of decision :	**25.07.2022**

1.	Sh. Kishan Loiwal S/o Sh. SC Loiwal **R/O**: A 14/16, LGF, Vasant Vihar - 110057	**Complainant**
	Versus	
1. 2.	M/s Athena Infrastructure Limited **Regd. office:** M-62 & 63, 1st floor, Connaught Place, New Delhi-110001 M/s Indiabulls Real Estate Limited **Regd. office:** Indiabulls House, Ground floor, 488-451, Udyog Vihar, Phase-V, Gurgaon, Haryana-122001	**Respondents**

CORAM:	
Dr. KK Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Complainant-in-person with Sh. Somdeep Tiwari (Advocate)	**Complainant**
Sh. Rahul Yadav (Advocate)	**Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name and location of the project	"Indiabulls Enigma", Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	15.6 acres
4.	DTCP License	213 of 2007 dated 05.09.2007 valid till 04.09.2024 10 of 2011 dated 29.01.2011 valid till 28.01.2023
	Name of the licensee	M/s Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of the licensee	Varali properties
5.	HRERA registered/ not registered	**Registered vide no.** **i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018** **ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018** **iii. 353 of 2017 dated**

		20.11.2017 valid till 31.03.2018 **iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018**
6.	Application dated	21.10.2010 (As per page no. 52 of complaint)
7.	Allotment letter dated	Not allotted
8.	Date of execution of flat buyer's agreement	Not executed
9.	Unit no.	B-111 on 11th floor, tower B (As per page no. 102 of complaint)
10.	Super Area	3285 sq. ft. (As per page no. 102 of complaint)
11.	Total consideration	Cannot be ascertained
12.	Total amount paid	Rs. 5,00,000/- (As per application form dated 21.10.2010)
13.	Possession clause	**Clause 21 of similar situated BBA** *(The Developer shall endeavor to complete the construction of the said building /Unit within* ***a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment****by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall*

		within 60 days thereof, remit all dues and take possession of the Unit.)
14.	Due date of possession	21.04.2014 (Calculated from the date of the booking i.e.; 21.10.2010 + grace period of 6 months) ***Grace period is allowed***
15.	Occupation Certificate	Not obtained for tower B (As per website of DTCP)
16.	Offer of possession	Not offered
17.	Cancellation letter dated	06.07.2011 (As per page no. 111 of complaint)

B. Facts of the complaint:

3. That both the respondents assured that they have obtained all the necessary permissions, approval etc. from the concerned authorities and would start the construction as soon as possible and the possession of the apartment should be delivered after the construction within a period of 36 months from the date of booking.

4. That the complainant as per representations of the official representations and warranties selected 4BHK apartment with the SQ bearing no B-111 in tower B and paid a booking amount of Rs. 5,00,000/- through cheque No. 000407 dated 21.10.2010 which was duly encashed by the respondents on 27.10.2010. The respondents officials informed the complainant that since their computer system wasn't working, they would send the receipt to his

address. The complainant received the receipt dated 15.11.2010 in early December 2010 and was appalled to see that the receipt sent to him was of apartment bearing no A-082 instead of B 111 which was initially selected by the him. The same receipt was also returned to the respondents through sales organizer, Sanjeev real estates as per their request, for re issuing the receipt containing the correct particulars of the unit.

5. That due to respondents' unprofessional and lackadaisical actions, the complainant many times called respondents offices and also sent emails, to which no proper reply was ever received. Then, he e-mailed Mr. Akshay Kumar Chawla, Manager-marketing India Bulls Real Estate Limited regarding the same issue on 13.12.2010 and requested him to issue a new receipt of flat no. B-111. An official correct receipt was never sent to the complainant. The respondents instead of the receipt e-mailed the payment plan for flat no. B-111 to the complainant.

6. That the careless and unethical behaviour of the respondents continued and in furtherance, the complainant received a demand letter dated 09.12.2010 demanding payment for 10% of the total sale amount. The letter also mentioned the fact that the due date for payment of the said amount was 20.11.2010 and he was required to pay an interest for late payment, which is appalling due to the fact that there was a confusion regarding the allotted unit number and the delay was caused by the respondents as the rectification of that error did not happen in time. When the error was rectified the complainant received a revised application with

the PLC rate Rs.300/sq. feet instead of Rs.200/sq. feet, which was, at a later stage, rectified by the respondents by hand and no new application form was issued with the correct particulars.

7. That after the error on part of the respondents regarding the unit no., the complainant requested the respondents for the correcting demand letter. It is submitted that after receiving the confirmation the complainant further sent reminders to the agents/employees of the respondent no. 2 that he had an intent to make further payments provided that the respondents confirm that no delay interest would be charged as the discrepancy regarding the transaction was solely the fault of the respondent(s) and the complainant rightfully was unwilling to pay extra money for no fault of his.

8. That on 28.01.2011 instead of rectifying their mistakes and sending the correct demand letter, it again committed an error and sent a letter stating that they had received a total amount of Rs. 18,00,000/ and only a sum of Rs. 1050/- was shown as payable. The complainant having a bona fide intention and an intent to pay the balance cost of the unit, sent an email bringing this accounting error to the knowledge of the respondents stating that he didn't pay Rs. 13,00,000/- and requested them to correct the amount and further asked them for the waiver of interest as per demand letter because the confusion was due to the actions of the respondents without any fault of the complainant.

9. That after efforts made by the complainant to sort out the confusion regarding the payable amount exhibiting his bonafide intention, the complainant received a demand letter dated 14.02.2011 asking for Rs.12, 35,350/- as payment due and the cheque for the same was immediately paid by him and the same was accordingly intimated to respondent no. 1.

10. That the complainant again received another demand letter dated 06.05.2011 asking for the next installment, showing credit amount of Rs. 12,35,350/- which was paid by complainant in the month of February but to his utter shock, the demand letter also indicated an overdue interest amount which was because of an alleged delay in paying booking amount of Rs. 5,00,000/-.

11. That the complainant has already paid the above-mentioned amount on time, which was debited from the complainant's bank too. The demand letter also charged an overdue interest amount of Rs. 2,595/- citing facts and it also showed that the respondent received Rs. 61,691/- from the complainant and as a matter of fact, the complainant didn't make any such payment. The abovementioned discrepancies in one particular demand letter clearly show that the respondents had an intention to defraud their clients.

12. That the complainant issued cheque of Rs. 12,35,350/- and the cheque was duly submitted with M/s Sanjeev Real Estate. It was later intimated by M/s Sanjeev Real Estate that the cheque has been misplaced by them. Being

diligent and a prudent person, the complainant requested the bank to stop payment for the particular cheque and called M/s Sanjeev Real Estate to collect a fresh cheque in lieu of the misplaced cheque.

13. That, thereafter the recipients of the earlier cheque informed the complainant that the misplaced cheque was found by them and they had already submitted the cheque with the respondents. the respondents, through further letter claimed that the cheque for Rs 12,35,350/- has been encashed and credited to their accounts and believing the words of the respondents and thinking that the cheque was encashed before stopping the payment, the complainant did not take any further action upon it.

14. That the complainant was under a bonafide impression that the part payment towards the unit has been made by him. This fact can be ascertained from the letter dated 06.05.2011 which shows payment received of Rs. 12,35,350/-.

15. That the complainant was in utter shock after receiving the letter dated 01.06.2011 stating that the amount of Rs. 12,35,350/- is unpaid and further wrote letter dated 06.07.2011 mentioning about the letter dated 23.06.2011 wherein intimating a unilateral cancellation of the unit and forfeiture of Rs. 5,00,000/- due to default in payment. This action of the respondents shows and proves their intent of duping the complainant of his hard-earned money. Furthermore, the complainant vide email-dated 17.07.2011 intimated to the respondent requesting a copy of the afore-

mentioned letter. In furtherance to his letter, it sent a soft copy of the letter dated 23.06.2011 on 26.08.2011 to which the complainant replied on the same day. It is pertinent to point out that the said letter also mentioned the incorrect amount and an overdue on an amount already paid by the complainant.

16. That the complainant was willing to make further payments towards the sale of the unit and his intent was also clear from the numerous correspondences sent but to defraud the complainant of his hard earned money, a letter dated 06.07.2011 was sent to him through courier which was received on 12.07.2011 wherein the respondents unilaterally cancelled the provisional reservation of flat no. B-111 and forfeited the money paid by him. The complainant in protest and aggrieved by the acts of the parties, wrote an email dated 17.07.2011 stating his surprise regarding the parties decision to cancel the said booking of the apartment and cheating him of the booking amount. He mentioned the timeline of series of events, which transpired which clearly indicate that the complainant is nowhere at fault and the entire series of events which transpired were completely the fault of the parties. The respondents in complete arbitrary and callous manner stated that they will not be able to re-instate the booking. This statement of the respondents came after the series of correspondences which showed that the confusion and issues relating to the unit and its payments were created by the respondents and their employees.

17. That the complainant aggrieved by the same sent a legal notice dated 01.11.2013 to the them asking for the restoration of the unit B-111 by the payment of the due amount without any delay interest or penalty and in the alternate if the respondents cannot do the same, to refund the sum of Rs. 5,00,000/ along with interest @24% interest from the date of payment along with Rs. 10,00,000/- as a compensation for the trouble caused to him, within 15 days of the receipt of the legal notice.

18. That the respondents failed to reply to the legal notice sent by the him thus, he was constrained to file a complainant before the District Consumer Redressal Forum. The complaint before the Hon'ble District Consumer Redressal Forum continued for more than four years. The proceedings were complete, and the final order was awaited when the respondents arbitrarily filed an application stating that the Hon'ble forum did not have the pecuniary jurisdiction to adjudicate the matter. The Hon'ble forum returned the complaint ordering the complaint be filed in the appropriate forum. It is pertinent to mention that the order passed by the Hon'ble Forum did not touch the merits of the case and it was passed on a technical objection raised by the respondents.

C. Relief sought by the complainant:

19. The complainant has sought following relief(s):

    i. Direct the respondent to refund the entire amount of along with interest @18% p.a. from date when payment was made till its actual realization.

D. Reply by respondent no. 1:

The respondent by way of written reply made following submissions

20. That the complainant looking into the financial viability of the project being developed by the answering respondent and its future monetary benefits voluntarily booked the unit in question for better returns and appreciation in value and signed the application form with respect to the unit in question on 21.10.2010 accepting all the terms of the same. Both the parties were bound to adhere to the terms of the said application form.

21. That the complainant made a number of defaults in timely payment of the due installments with respect to the provisional booked unit. In terms of the application form duly signed by the complainant and the answering respondent, time was the essence with respect to payment as demanded by the answering respondent, clause 13 of the application form is reproduced below:

> *The applicant(s) agree(s) that time shall be the essence in respect of payment on or before due date, of Total Sale Price and other amounts payable by the Applicant(s) or as demanded by the Company from time to time.*

In view of the above it is clear that timely payment(s) of due installments towards the provisional booked unit was essence of the agreement which the complainant failed to adhere and breached the terms of agreed by and between the complainant and the answering respondent.

22. That as per terms of clause 36 of the application form, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the

provisional unit booked by the complainant, the same shall be adjudicated through arbitration mechanism only. As per said clause in the event of any disputes arises between the parties, the same ought to be referred to the arbitration. Thus, the complainant is contractually and statutorily barred from invoking the jurisdiction of this authority.

23. That the relationship between parties is governed by the terms of the application form dated 21.10.2010. The document that has been referred to, for the purpose of getting the adjudication of the instant complaint, is the application form dated 21.102.10, executed much prior to coming into force of the RERA and the RERA Rules. Further the adjudication of complaint for the purpose of granting refund ,interest and compensation, as provided under sections 12, 14, 18 and 19 of Act of 2016, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement, it is pertinent to mention herein that the application form dated 21.10.2010 was signed towards provisional booking for the unit in question and no BBA was executed by and between the parties, hence the Complainant does not falls under the purview of buyer and is barred in invoking the jurisdiction of this authority.

E. Reply by respondent no. 2:

The respondent by way of written reply made following submissions

24. That there is no privity of contract between the complainant and the respondent no. 2. Hence, in the absence of any relationship, the

complainant is not entitled for any claim / relief from the respondent no. 2 as contended in the instant complaint by the complaint. Also, it is respectfully submitted that the Complainant has not made any payment in the name and account of respondent no. 02 with respect to his alleged booked unit.

25. That the relationship that forms the basis of the instant complaint arises out of the documents executed by and between the complainant and the developer. It is pertinent to note that there is no contractual relationship between complainant and the answering respondent as no documents was ever signed / executed between them. There is no legal relationship or privity of contract between the complainant and the respondent no. 02.

26. That the complainant has made false and baseless allegations against the respondent no.2 and further impleaded it as a party in the instant complaint with a mischievous intention to take illegal benefits. It is submitted that there is no cause of action in favour of the complainant to institute the present complaint against respondent no.2 and hence needs to be dismissed.

27. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority:

28. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the objections raised by the respondent:

G.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

29. The respondent has raised an objection that the complainant has not invoked arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the application form:

> *"Clause 36: All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection, the Applicant(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts in New Delhi alone shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement ....."*

30. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the

provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the application form as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer.

31. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017*** **decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided

in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

32. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G.II Objection regarding jurisdiction of authority w.r.t. application form executed prior to coming into force of the Act

33. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the

view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017*** which provides as under:

> *119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

34. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to*

some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

35. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

H. Entitlement of the complainant for refund:

H.I Direct the respondent to refund the entire amount along with interest @18% p.a. from date when payment was made till its actual realization.

36. In the present case, the complainant booked the subject unit on 21.10.2010 and paid booking amount of Rs. 5,00,000/-. The complainant submitted that the respondent said that since its system is not working, the receipt of same shall be generated later. On 15.11.2020, when the complainant received copy of application form, it came to the knowledge of the complainant that instead of subject unit booked by the complainant i.e. B-111 admeasuring 3285 sq. ft., the complainant's booking was made against

unit no. A-082 admeasuring 3340 sq. ft. The complainant raised his concern to which the corrected application form was sent to the complainant on 13.12.2020.

37. But again on 28.01.2011, wrong demand letter was sent by the respondent showing receipt of Rs. 18,00,000/- from the complainant, to which he raised the concern that he has never paid Rs. 13,00,000/- over and above booking amount of Rs. 5,00,000/-. The respondent despite several reminders never issued receipt of booking amount paid by the complainant and keep raising demands. As a result, after giving reminder dated 06.05.2011 & 01.06.2011, the respondent cancelled the unit of the complainant on 06.07.2011.

38. Clause 12 of application form provides provision of cancellation and surrender of unit wherein an amount of 5% shall be forfeited if booking is made before sanction of plan and an amount of 10% shall be forfeited if such booking is cancelled after approval of plan.

39. The authority is of view that in the present case, the total sale consideration cannot be ascertained as well as although there was lacuna on part of respondent services. However, the complainant also failed to make payment towards allotted unit as per obligation conferred upon him under section 19(6) of Act of 2016. Therefore, the authority hereby directs the promoter to return the amount received by him after deducting 5% amount of the basic sale price as per application form.

H.II Direct the respondent to pay legal cost.

40. The complainant is claiming compensation in the above-mentioned relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

I. Directions of the Authority:

41. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

    i. The authority hereby directs the promoter to return the amount received by him after deducting 5% amount of the basic sale price as per application form within a period of 90 days from date of this order and failing which legal consequences would follow.

42. Complaint stands disposed of.

43. File be consigned to the registry.

V.I—

(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2022